



IN THE CIRCUIT COURT
OF PIKE COUNTY, ALABAMA

MARIO DAVENPORT and TARA
DAVENPORT, as parents and next
friends and on behalf of their daughter,
Maori Davenport,

Plaintiffs,

v.

STEVE SAVARESE, individually and
as Director of the Alabama High School
Athletic Association; and ALABAMA
HIGH SCHOOL ATHLETIC
ASSOCIATION,

Defendants.

CASE NO. CV-2019-000002

**DEFENDANTS' MOTION TO TRANSFER
OR, IN THE ALTERNATIVE, DISMISS COMPLAINT**

COME NOW Defendants, Alabama High School Athletic Association (AHSAA) and Steve Savarese (Savarese), individually and as Executive Director of AHSAA, and move to transfer venue of this proceeding to the Circuit Court of Montgomery County or, in the alternative, move to dismiss the *Complaint for Temporary and Permanent Injunction and Emergency Motion for Temporary Restraining Order*, and in support hereof state as follows:

I. MOTION TO TRANSFER VENUE

1. This proceeding should be transferred to the Circuit Court of Montgomery County, Alabama. On October 4, 2018, Mario Davenport and Maori Davenport executed "Participant Agreement, Consent, Release, and Venue" which provides in pertinent part as follows:

Part 2. Parental/Guardian Agreement, Consent, and Release (to be completed and signed by a parent(s)/guardian(s) at the bottom; where divorced or separated, parent/guardian with legal custody must sign.)

...

- D. VENUE FOR ANY AND ALL LITIGATION AND ATTORNEY FEES. I agree that in the event I, or anyone acting on my child's behalf, files suit against AHSAA or any of its officers, directors, agents, or employees alleging any cause of action and seeking either legal or equitable relief impacting my child (individually) or my child's team participation in AHSAA contests, ***such action shall be filed in the Montgomery County, Alabama, Circuit Court. I also agree that filing such action in the Montgomery County Circuit Court is both fair and reasonable.*** I further agree that should AHSAA prevail in such litigation, either in Circuit Court or any Appellate Court, then AHSAA shall be entitled to reasonable attorney fees and costs associated with the litigation.

(The Participant Agreement, Consent, Release, and Venue is attached to the Affidavit of Steve Savarese as Exhibit A-1)(emphasis added).¹

2. The validity of such clauses is well established in Alabama law. Ex parte Riverfront, LLC, 129 So. 3d 1008 (Ala. 2013) (discussed in Ex parte Riverfront, LLC, 196 So. 3d 1167 (Ala. 2015)); Professional Insurance Corp. v. Sutherland, 700 So. 2d 347 (Ala. 1997). A form-selection clause is presumed to be valid "unless the party challenging the clause clearly establishes that it would be unfair or unreasonable under the circumstances to hold the parties to their bargain." Ex parte CTB, Inc., 782 So. 2d 188, 190-91 (Ala. 2000). Therefore, the above-styled cause should be transferred to the Circuit Court for Montgomery County, Alabama. (A copy of an Order transferring venue to Montgomery County based upon the above-cited venue clause entered by the Honorable

¹

It should also be noted that the AHSAA 2018-19 HANDBOOK states in Rule VI, Administration, Section 10, School Restitution Rule, "Any member school that sues the AHSAA or is involved in a suit against the AHSAA, and loses the case shall be required to pay all legal expense in the litigation. **Note:** A suit filed against the AHSAA for any reason, ***must be filed in Montgomery County, Alabama.***" (Exhibit A-2, pp. 65-66)(emphasis added).

Judge Michael Youngpeter, Circuit Court of Mobile County, Alabama, in Case No. CV-2014-902432 is attached hereto as Exhibit B).

II. MOTION TO DISMISS

3. The *Complaint for Temporary and Permanent Injunction and Emergency Motion for Temporary Restraining Order* fails to state a claim against the Defendants upon which relief can be granted.

4. The AHSAA Rules and Regulations are set out in a handbook which is issued to every member of the AHSAA and is available to the public on the AHSAA website. A copy of the 2018-19 HANDBOOK is attached hereto as Exhibit A-2. The 2018-19 HANDBOOK states in Article II of the AHSAA Constitution “The object of this association shall be to **promote pure amateur athletic competition** in the high schools of Alabama.” (Exhibit A-2, p. 18)(emphasis added). The 2018-19 HANDBOOK states in the By-Laws, under Rule I - Eligibility, as follows:

SECTION 8. AMATEUR RULE. Only amateurs are eligible. An amateur is one who does not use his/her knowledge of athletics or athletic skill for gain. Amateur standing shall be further determined by the following standards:

(a) A student is ineligible if he/she has received money as a prize, or has sold a prize received in a contest, or has bet on a contest in which he/she is a participant.

(b) Professionalism is defined as accepting remuneration, directly or indirectly, for playing on athletic teams and in sports activities or for playing under an assumed name.

(c) A student who accepts material or financial inducement from any source is ineligible.

(d) No student shall receive more than actual expenses involved in travel to and from a contest or camp and necessary meals and lodging in the meantime. A student shall not at any time receive any portion

of a livelihood for participation in athletics, other than actual expenses for any specific game or camp.

1. A student cannot accept payment for loss of time or wages while participating in athletics as part of expenses.
2. Reasonable meals, lodging and transportation may be accepted if such are accepted in service rather than money or some material form.
3. Students playing on a non-home team which requires boarding away from home by the week, etc., will be looked upon as violating the professional rule if board is not paid by his family.
4. A team which plans to divide among its members any surplus either during or at close of season shall be considered a professional team.

(e) No award of any kind having a monetary value of more than 250 dollars—other than medals, trophies, plaques or AHSAA championship rings—shall be made to students. Violation of this rule on the part of school officials shall subject the school to suspension for one year. Acceptance of awards exceeding these limitations shall disqualify a student. Cash awards or gift cards for athletic performances or participation may not be given or received.

(f) A student who has lost his/her amateur standing may be reinstated after the lapse of one high school season for the sport in which he/she has become professional provided he/she has not persisted in breaking the amateur rule.

(Exhibit A-2, pp. 29-30).

5. Plaintiff, Maori Davenport, attends Charles Henderson High School in Troy, Alabama. On November 30, 2018, Davenport was declared ineligible based upon her receiving \$857.20 for “loss of wages” while participating in USA Basketball during the summer of 2018. Prior to the declaration of ineligibility, Davenport had participated in several regular season

basketball games as a member of the Charles Henderson High School varsity girls basketball team. Along with the ineligibility ruling, the AHSAA assessed a \$300 fine against Charles Henderson High School, placed the school on probation for a period of one year, and required the school to forfeit the basketball games in which Davenport had participated. (The ruling is attached as Exhibit A-5).

6. Davenport's ineligibility ruling was subsequently appealed by Brock Kelley, Principal - Charles Henderson High School, to the District Board and Central Board of Control of the AHSAA, both composed of representatives of member AHSAA schools, whereby the ruling was repeatedly affirmed. (Exhibits A-8 and A-12).

7. This Court lacks jurisdiction of the Plaintiffs' claims because the claims, rights, privileges and immunities which are sought to be declared and determined in this action are not such claims, rights, privileges, or immunities as are secured by the Constitution or laws of the United States, or the Constitution or laws of the State of Alabama. See Scott v Kilpatrick, 286 Ala. 129, 237 So. 2d 652 (Ala. 1970); and Mitchell v. Louisiana High School Athletic Association, 430 F.2d 1155 (5th Cir. 1970).

8. The Court is without jurisdiction to entertain the *Complaint* in this case as the Court has no jurisdiction to interfere with the internal affairs and eligibility rulings of a voluntary high school athletic association, such as AHSAA, and it affirmatively appears that the action of the AHSAA in declaring Davenport ineligible was not the result of fraud, lack of jurisdiction, collusion or arbitrariness.

9. In Scott v. Kilpatrick, 286 Ala. 129, 237 So. 2d 652 (1970), the Alabama Supreme Court declared that the Courts should not interfere in the internal operations of the affairs of the AHSAA. The Supreme Court has further stated that athletics and athletes belong in their own arena

and that the courtroom is not the proper field of competition. Alabama High School Association v. Rose, 446 So. 2d 1 (Ala. 1984).

10. Very recently, in St. Paul's Episcopal School v. The Alabama High School Athletic Association, No. CV-18-02410-WS-B (S.D. Ala. June 27, 2018), the United States District Court in Mobile observed:

[T]he Alabama Supreme Court has repeatedly emphasized the AHSAA's near-absolute authority in its own affairs. A courtroom is rarely the proper field for competition when it comes to disputes over high-school athletic rules. Alabama courts take a hands-off approach to controversies concerning regulation of high-school athletics, at least in the absence of clear and convincing evidence of fraud, collusion, bias or arbitrariness.

(Exhibit C, p. 3). The Federal District Court further stated:

The Alabama Supreme Court has explained, in the context of a legal challenge to the AHSAA's determination that the plaintiff was ineligible to play high-school football, that "[a]thletics and athletes belong in their own arena. A courtroom is not the proper field of competition." Alabama High School Athletic Ass'n v. Rose, 446 So.2d 1, 5 (Ala. 1984). Subscribing to a "hands-off philosophy" summarized by the mantra "it's their show; let them run it," the Rose Court elaborated that "[e]ven claimed violations of due process of law are viewed more liberally in favor of the association's authority to administer its own rules and regulations." Id.⁴³ Last year, the Alabama Supreme Court reaffirmed the proposition that "the burden on the challenger to overcome the presumption favoring the Association's absolute authority in the conduct of its own affairs is a heavy one," requiring clear and convincing evidence of fraud, collusion or arbitrariness. Ex parte Alabama High School Athletic Association, 229 So.3d 1100, 1102 (Ala. 2017) (citation omitted).

(Exhibit C, pp. 39-40).

11. This Court lacks jurisdiction of the parties, the alleged cause of action and the subject matter alleged in the *Complaint*. It is undisputed Maori Davenport accepted payment for loss of wages from USA Basketball in violation of the Amateur Rule. A check dated August 15, 2018, was endorsed by Maori Davenport and posted to a bank account on August 27, 2018. Maori Davenport

had completed a W-9 tax form as early as July 20, 2018. The AHSAA was not notified of this payment until three months later on November 27, 2018. Tara Davenport sent a cashier's check to USA Basketball in the amount of \$857.20 on November 28, 2018. The ruling of the Executive Director was appealed first to the District Board and then to the Central Board of Control. Charles Henderson High School presented its case on appeal on two separate occasions and was afforded full and fair hearings. Both the District Board and the Central Board of Control affirmed the ruling by unanimous vote of those members attending. (*See*, Affidavit of Steve Savarese attached hereto as Exhibit A).

12. Plaintiffs are without standing to maintain this action and seek the relief prayed for in their *Complaint* in that the *Complaint* fails to show that Plaintiffs have any property right, civil right, or other rights cognizable or enforceable by this Court against Defendants, and further fails to show any duty owed by Defendants to Plaintiffs or the violation of any legal duty. It is undisputed the Amateur Rule was violated, and Charles Henderson High School was afforded two appeal hearings.

13. The eligibility Rules and By-Laws of the AHSAA are reasonable and necessary rules which were duly adopted by the member schools of the AHSAA and have been uniformly enforced in the State of Alabama without discrimination on any grounds, and such Rules and By-Laws of the AHSAA are not unconstitutional and do not violate any legal or constitutional rights of Maori Davenport.

14. The management of the affairs of the AHSAA is vested in a Legislative Council and a Central Board of Control. The Executive Director acts for the Central Board of Control when not in session. The Legislative Council is composed of 32 members - eight district boards made up of

four members, each elected by member schools in each district. The Legislative Council has the authority to make changes in the Constitution and eligibility rules with a two-thirds majority vote. Legislative proposals may be submitted online by member schools and must include a rationale and be signed by the principal by January 31. Principals of member schools may vote on the proposals February through March. Any proposal is then voted on by the Legislative Council at a regularly scheduled meeting in April. If the Legislative Council votes to pass a proposal, the proposal becomes effective as of the first day following the last day of the school year, and the Central Board of Control implements the proposal. (Exhibit A).

15. The Courts have supported the basic principles of the AHSAA, have made consistent rulings that the Court is without jurisdiction regarding the internal affairs of the AHSAA, and that students do not have a legal right to participate in extracurricular activities. For the convenience of the Court, a copy of each of the following cases supporting this position is attached hereto as composite Exhibit D:

Mitchell v. Louisiana High School Athletic Association, 430 F.2d 1155 (5th Cir. 1970)

Taylor v. Alabama High School Athletic Association, 336 F. Supp. 54 (Ala. 1972)

Alabama High School Athletic Association v. Medders, 456 So. 2d 284 (Ala. 1984)

Alabama High School Athletic Association v. Rose, 446 So. 2d 1 (Ala. 1984)

Alabama High School Athletic Association v. Scaffidi, 564 So. 2d 910 (Ala. 1990)

Kubiszyn v. Alabama High School Athletic Association, 374 So. 2d 256 (Ala. 1979)

Scott v. Kilpatrick, 286 Ala. 129, 237 So. 2d 652 (Ala. 1970)

James v. Tallassee High School, 907 F. Supp. 364 (M.D. Ala. 1995)

Bryan Hendrix v. Alabama High School Athletic Association, U.S. District Court, N.D. of Alabama, Case No. CV 84-P-2341-S (Oct. 9, 1984)

Ex parte Alabama High School Athletic Association (Re: The Conecuh County Board of Education v. AHSAA, et al., Conecuh County CV-89-107; Andalusia High School v. AHSAA, et al., Covington County CV-89-218), Ala. Supreme Court Case No. 89-123 (Oct. 30, 1989)

Ex Parte Alabama High School Athletic Association (Re: Bobby Russell v. Orval L. Seay, Walker County CV 84-344 and Franklin County CV-84-238), Ala. Supreme Court Case No. 84-157 (Nov. 9, 1984)

Ex Parte Alabama High School Athletic Association (Re: Central High School, et al. v. AHSAA, Russell County CV-83-5052; Prattville High School v. AHSAA, Autauga County CV-83-102; Alexandria High School v. AHSAA, Calhoun County CV-83-50098), Ala. Supreme Court Case No. 83-177 (Nov. 10, 1983)

Ex parte Alabama High School Athletic Association (Re: Elbert Williams, et al. v. AHSAA, et al., Jefferson County CV-188-192), Ala. Supreme Court Case No. 1035 (Nov. 14, 1974)

Ex Parte Greenville Academy, Inc. (Re: Cahawba Christian Academy v. Alabama Private School Association, Montgomery County CV-83-1595-G) Ala. Supreme Court Case No. 83-186 (Nov. 14, 1983)

Nathan Brenner v. Tuscaloosa City Board of Education, Tuscaloosa County Circuit Court, CV-92-209 (Feb. 20, 1992)

Anna C. Stallworth, etc., v. Alabama High School Athletic Association, Mobile County Circuit Court, CV-1999-3652 (Nov. 12, 1999)

Gabe Bullington, etc. v. Alabama High School Athletic Association, Madison County Circuit Court, CV-2000-1512-BEW (Sept. 1, 2000)

J. Charles Hayes, etc. v. Alabama High School Athletic Association, et al., Jefferson County Circuit Court, CV-2001-1842 (March 26, 2001)

Bradley Franklin, etc. v Alabama High School Athletic Association, et al., Franklin County Circuit Court, CV-2003-257 (January 29, 2004)

Ex parte Alabama High School Athletic Association and Daniel Washburn, Executive Director (RE: Justin Britt, etc v Alabama High School Athletic Association, Cullman County CV-04-67; Arab High School, etc v. The Alabama High School Athletic Association, Marshall County CV-04-38), Ala. Supreme Court Case No. 1030699 (Feb. 6, 2004)

Jonathan Hightower v. Alabama High School Athletic Association, Calhoun County Circuit Court, CV-2005-772 (October 1, 2005)

Ex Parte Alabama High School Athletic Association and Daniel L. Washburn (Re: Gadsden City Board of Education, for Litchfield High School v. Alabama High School Athletic Association, et al., Etowah County CV-05-1454) Ala. Supreme Court Case No. 1050176 (November 3, 2005)

Alabama High School Athletic Association v. A.H.B., a minor, by and through his next friend, Kelly Bowes, (Appeal from St. Clair County Circuit Court, Case CV-11-000178), Ala. Supreme Court Case No. 1101387 (Oct. 17, 2011)

Ex parte Alabama High School Athletic Association and Steven P. Savarese, (In Re: The Jefferson County Board of Education et al. v. Alabama High School Athletic Association, Jefferson Circuit Court CV-11-002105), Ala. Supreme Court Case No. 1110131

Ex parte Alabama High School Athletic Association and Steven P. Savarese, (In Re: Gadsden City Board of Education, for and on behalf of Gadsden City High School v. Alabama High School Athletic Association and Steven P. Savarese, Etowah Circuit Court CV-11-900623), Ala. Supreme Court Case No. 1110132

Ex parte Alabama High School Athletic Association and Steven P. Savarese, (In Re: Decatur City Board of Education, for the benefit of Austin High School v. Alabama High School Athletic Association, Morgan Circuit Court CV-11-900413), Ala. Supreme Court Case No. 1110133

Ex parte Alabama High School Athletic Association and Steven Savarese, (In re: Erica L. Pogue, individually and as mother and next friend of A.J.K., Geneva County Circuit Court CV-16-90087), Ala. Supreme Court Case No. 1160121.

WHEREFORE, PREMISES CONSIDERED, the *Complaint for Temporary and Permanent Injunction and Emergency Motion for Temporary Restraining Order* is due to be transferred to the Circuit Court of Montgomery County, Alabama or, in the alternative, dismissed by the Court.

Respectfully submitted this 23rd day of January, 2019.

/s/ James E. Williams

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically filed on the 23rd day of January, 2019, with the Clerk of the Court, and that a copy of same will be served upon the listed counsel of record by electronic notification via AlaFile:

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